

BRIAN K. CARMODY
Claimant

FULL HOUSE CONSTRUCTION, INC.
Respondent

**MISSOURI EMPLOYERS MUTUAL INSURANCE
COMPANY**
Insurance Carrier

- (1) Was timely notice provided for claimant's accidental injury to his left knee?
- (2) In order to decide the issue dealing with notice, the Appeals Board (Board) must also designate a date of accident in this instance. There is a dispute regarding whether claimant's date of accident is February 27, 2002, or March 27, 2002. The February date would not be timely for notice purposes, whereas the March date would be timely as it was agreed claimant provided notice to respondent on or about April 3, 2002. That issue will also, therefore, be determined in this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds that the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury to his left knee while walking across a work location when he stepped into a hole. He suffered immediate pain to the left knee. Claimant told Bernard Reams, his coworker, but did not immediately advise his supervisor, crew leader Al Chouteau.

Claimant iced the knee at home and wrapped it in an ace bandage.

At this point, claimant's evidence and testimony become somewhat contradictory. When claimant filed the original E-1, it listed March 27, 2002, as the date of accident. An amended E-1, filed shortly thereafter, lists February 27, 2002, as the date of accident. Claimant testified that his supervisor, Al, noticed the ace bandage and the fact that he was limping on the left knee. This was approximately one week after the date of accident. Claimant advised Al that he had suffered an injury. When Al inquired as to when and where, claimant said it was on their last job, approximately one week before. Claimant was referred to the owner of the company, Kevin McRoberts, and sent to the doctor the next day. The first medical evidence is from Charles Smith, M.D., showing an examination date of April 5, 2002.

As noted above, if claimant's date of accident is February 27, 2002, then any notice on or about April 3, 2002, would be defective pursuant to K.S.A. 44-520, which mandates notice be given to the employer within ten days after the date of accident. However, a date of accident of March 27, 2002, would result in the notice on April 3, 2002, being timely.

It is acknowledged in the record that claimant is a poor historian and has difficulty with dates. In this instance, claimant has alleged two separate dates of accident, one month apart. The testimony by claimant that he talked to Al within one week of the date of accident and was almost immediately referred to the doctor supports a finding that claimant's actual date of accident was March 27, 2002, and notice was, therefore, timely. The Board, at this time, finds this testimony to be credible, especially in light of the fact that claimant is the only witness to testify in this matter to this point.

The Board, therefore, finds that claimant's date of accident of March 27, 2002, would result in timely notice of injury pursuant to K.S.A. 44-520 and the Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated October 23, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

c: James M. Barnett, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent
Julie A. N. Sample, Administrative Law Judge
Director, Division of Workers Compensation